

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

COMMERCE AND INDUSTRY	§	
INSURANCE COMPANY	§	PLAINTIFF
	§	
v.	§	Civil Action No. 1:10cv45-LG-RHW
	§	
BLACKHAWK MARINE &	§	
INDUSTRIAL CONTRACTORS, LLC,	§	
JUSTINE T. BALLAY, and	§	
JOHN DOES 1-10	§	DEFENDANTS

**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT
AND DENYING DEMAND FOR ATTORNEY'S FEES**

BEFORE THE COURT is the Motion for Default Judgment against Blackhawk Marine & Industrial Contractors, LLC, [11] filed by the plaintiff, Commerce and Industry Insurance Company. Upon reviewing the Motion and the applicable law, the Court finds that the Motion for Default Judgment against Blackhawk should be granted, but the request for attorney's fees should be denied.

DISCUSSION

Commerce and Industry issued a workers' compensation and employers liability policy to Blackhawk for the years of 2007 and 2008. (Ex. A to Compl.) The policy provided for an estimated premium of \$172,757 for the 2008 policy and an estimated premium of \$177,350 for the 2007 policy based on information provided by Blackhawk. (*Id.*) However, the policy permitted Commerce and Industry to perform an audit to determine the actual premiums for the policies. (Compl. at 3). When Commerce and Industry performed an audit of the policies in 2009, it determined that the outstanding total premium due under the 2007 policy was \$84,576.00 and the outstanding total

premium due under the 2008 policy was \$322,728.00. (Ex. B,C to Compl.) Commerce and Industry has since applied other premiums and payments to the outstanding balance, leaving a current balance of \$302,632.00. (Compl. at 3).

Commerce and Industry filed its Complaint against Blackhawk and its President/CEO, Justine Ballay¹, on February 11, 2010. Commerce and Industry then learned that Blackhawk's registered agent had resigned, and a new agent had not been appointed. Therefore, it served the Mississippi Secretary of State pursuant to Miss. Code § 79-29-111 on June 28, 2010, and the Secretary of State mailed a copy of the summons and complaint to Blackhawk on June 30, 2009. After Blackhawk failed to file an answer to the complaint, Commerce and Industry sought and obtained a clerk's entry of default. It has now filed the present Motion for Default, seeking \$302,632.00 in unpaid premiums, its costs, prejudgment and postjudgment interest, and attorney's fees pursuant to Miss. Code Ann. § 11-53-81.

Upon reviewing the record in this matter, the Court finds that Commerce and Industry is entitled to a default judgment in the amount of \$302,632.00 pursuant to Rule 55 of the Federal Rules of Civil Procedure. The Court further finds that Commerce and Industry is entitled to costs pursuant to Rule 54 of the Federal Rules of Civil Procedure as well as prejudgment and postjudgment interest at a rate of eight percent per annum pursuant to Miss. Code Ann. §75-17-1 and Miss. Code Ann. §75-17-7.

However, the request for attorney's fees pursuant to Miss. Code Ann. § 11-53-81

¹Ballay has not yet been served with process.

is denied, because the statute provides that attorney's fees should be awarded when a person fails to pay an open account within thirty days after receipt of written demand. "An open account is a type of credit extended through an advance agreement by a seller to a buyer which permits the buyer to make purchases without a note of security and is based on an evaluation of the buyer's credit." *Cox v. Howard, Weil, Labouisse, Friedrichs, Inc.*, 619 So. 2d 908, 914 (Miss. 1993). Debts that arise out of contracts, like the insurance policies at issue in this lawsuit, do not constitute "open accounts." *See C. R. Daniels, Inc. v. Yazoo Mfg. Co.*, 641 F. Supp. 205, 210 (S.D. Miss. 1986). Therefore, Commerce and Industry's request for attorney's fees is denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion for Default Judgment against Blackhawk Marine & Industrial Contractors, LLC, [11] filed by the plaintiff, Commerce and Industry Insurance Company, is **GRANTED**. Commerce and Industry Insurance Company is entitled to a default judgment against Blackhawk Marine & Industrial Contractors, LLC, in the amount of \$302,632.00, as well as prejudgment and postjudgment interest in the amount of eight percent per annum and its costs. A separate default judgment will be entered.

SO ORDERED AND ADJUDGED this the 15th day of October, 2010.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE